

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

RICHARD J. TESTA, JR., individually, and on  
behalf of all others similarly situated,

Plaintiff,

- against -

MERRILL LYNCH, PIERCE, FENNER &  
SMITH, INC., JOHN DOES 1-50 (said names  
being fictitious individuals), and ABC  
CORPORATIONS 1-50 (said names being  
fictitious companies, partnerships, joint ventures  
and/or corporations),

Defendants.

Civil Action No. 07 CV 8320 (AKH)

**ECF Case**

**STATUS REPORT**

In connection with efforts to resolve this and several other actions asserting similar claims against defendant Merrill Lynch, Pierce, Fenner & Smith, Incorporated, the parties have stipulated to, and this Court entered, an order staying all proceedings in this action and providing that the parties should file a report on or before June 30, 2008, to update the Court on the status of their settlement efforts.

This status report is submitted in accordance with the Court's directive. The parties have executed a memorandum of understanding reflecting their agreement to settle the matters and have drafted and executed other settlement papers, including a settlement stipulation. The parties are currently considering settlement documents that would require application to the District of Oregon for preliminary, and then final, approval of a nationwide class and collective action settlement. However, certain issues have recently been raised by some of the plaintiffs'

counsel, since the last status report to the Court, that may preclude a settlement at this time. It should become clear in the next few weeks whether the proposed settlement will go forward.<sup>1</sup>

Accordingly, the parties respectfully request that all proceedings in this matter continue to be stayed so that they can determine whether certain final issues relating to the proposed settlement can be resolved. The parties propose that they report back to the Court regarding status on or before July 31, 2008.

Dated: June 26, 2008

By: /s/  
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<sup>1</sup> Nothing in this submission is intended to create or affect any right to withdraw or contest withdrawal from the Settlement.

Dated: June 26, 2008

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